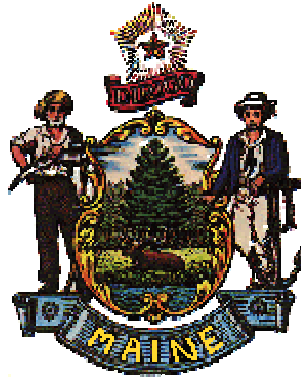


# **COMPLIANCE AUDIT REPORT**

## **STATE OF MAINE WORKERS' COMPENSATION BOARD**



**GAB ROBBINS**  
January 9, 2002

**Monitoring, Audit & Enforcement (MAE) Division**

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# SUMMARY

The Audit Division of the Maine Workers' Compensation Board (WCB) examined a sample of 25 claim files for the period under examination (2000) to determine compliance with statutory and regulatory requirements in the following areas:

- Form filing
- Timeliness of indemnity payments
- Accuracy of indemnity payments

Of the 25 claim files audited, there were 8 "lost time" claims, 12 "medical only" claims, 4 "incident only"<sup>1</sup> claims and one claim involving (compensable) specific loss with no lost time. Of the 8 "lost time" claims audited, 4 were compensable.

A number of entities assign some or all of their workers' compensation claims to GAB Robins to be adjusted. GAB Robins adjusts all of its assigned Maine workers' compensation claims in its Scarborough, Maine office. One adjuster handles all claims in that office. The following entities had claims that were included in this audit:

- CNA
- Fireman's Fund
- Legion Insurance Company
- National Semiconductor (self-insured)
- Reliance National
- Rite-Aid (self-insured)
- Zurich-American Insurance Group
- Zurich Insurance Company

Our on-site audit of GAB Robins began October 1, 2001 and ended October 2, 2001.<sup>2</sup>

The compliance tables found on pages 9 through 11 of this report are representative of our findings as of October 2, 2001. Since that time, the Audit Division has made two requests for missing form filings, form corrections, payments, and/or payment adjustments. The second request addressed GAB Robins' incomplete response to our first request, as well as some errors found on the forms that were received. GAB Robins has graciously complied with our requests.

- Following is a discussion of the aforementioned compliance tables and of the steps taken since October 2, 2001 to rectify identified noncompliance issues:

- ◆ Form filing compliance ranged from 0% to 67%.

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<sup>1</sup> "Incident only" claims incur no medical expenses and less than a day of lost time.

<sup>2</sup> This summary addresses our findings for all known claim activity (regarding the audit sample) through January 9, 2002.

## **SUMMARY (continued)**

- ◆ The highest percent of compliance (67%) was found in the filing of WCB-9, Notice of Controversy forms for “medical only” claims.
  - One “medical only” claim had been informally denied, but no WCB-9, Notice of Controversy (NOC) form had ever been filed with the Board or distributed to the parties involved. Upon request from the Audit Division, GAB Robins promptly filed the NOC.
- ◆ The second highest percent of compliance (64%) was found in the filing of the WCB-1, Employer’s First Report of Occupational Injury or Disease. Various factors effected this outcome:
  - One of the First Reports shown as “Not Filed” should have been attached to the aforementioned “medical only” NOC that had not been filed at the time of audit. This First Report was promptly filed in response to the Audit Division’s request.
  - One of the First Reports shown as “Not Filed” appears to have been sent to the Board prior to audit, but had not been received by the Board at the time of the on-site audit. A copy of this First Report was promptly filed in response to the Audit Division’s request.
  - One of the First Reports shown as “Not Filed” was for a claim involving unpaid indemnity benefits due under Section 213. This First Report was filed in response to the Audit Division’s second request.
  - The First Report shown as “Filed Late” was filed twenty days after the employer’s notice of incapacity. GAB Robins voluntarily paid a \$100 penalty for this violation to the Board’s Abuse Division prior to this audit (9-22-00).
- ◆ Sixty-percent (60%) compliance was found in the filing of the WCB-4, Discontinuance or Modification of Compensation form.
  - One claimant had returned to work, but no WCB-4 forms had been filed.
  - Compensation for another claim had been discontinued in accordance with a Mediation agreement, but no WCB-4 had been filed.

Both forms were promptly filed upon request from the Audit Division. However, errors were found on both forms and those errors were corrected in response to the Audit Division’s second request.

- ◆ Forty-percent (40%) compliance was found in the filing of the WCB-2, Wage Statement, the WCB-2A, Schedule of Dependent(s) and Filing Status form, and the WCB-3, Memorandum of Payment form.

## SUMMARY (continued)

- No WCB-2 or WCB-2A form had been filed for one of the indemnity claims audited. Both forms were promptly filed upon request from the Audit Division.
- No WCB-2 or WCB-2A form had been filed for one of the controverted lost-time claims audited. Both forms were promptly filed upon request from the Audit Division.
- No WCB-2, WCB-2-A or WCB-3 forms had been filed for a claim involving a specific loss payment without any lost time. All three forms were promptly filed upon request from the Audit Division
- No WCB-3 form had been filed for the aforementioned unpaid indemnity claim. This form was promptly filed upon request from the Audit Division. However, incomplete boxes were found on that form and those boxes were completed in response to the Audit Division's second request.
- The WCB-3 (MOP) shown as "Filed Late" involved a claim where the NOC had been filed late (Rule 1.1), but the MOP was not filed and payment was not made until after an agreement was reached at Mediation.
- ◆ Twenty-five percent (25%) compliance was found in the filing of WCB-9, Notice of Controversy (NOC) forms for "lost-time" claims.
  - Two NOCs were filed late prior to audit (Rule 1.1).
    - ❖ As previously mentioned, no payment was made and no MOP was filed until after an agreement was reached at Mediation for the first of these two late-filed NOCs.
    - ❖ The second late-filed NOC was used to unilaterally discontinue incapacity benefits (two indemnity payments were made prior to filing the NOC). Workers' Compensation Law does not allow this practice. However, a Mediation agreement was later reached and no action was taken at that time to address this violation. Had that Mediation agreement not been reached, GAB Robins would have been responsible for ongoing benefits.
  - The NOC shown as "Not Filed" appears to have been sent to the Board, but had not been received prior to audit. A copy of that form was promptly filed upon request from the Audit Division.
- ◆ Zero percent (0%) compliance was found in the filing of WCB-11, Statement of Compensation Paid forms.
  - It appears that GAB Robins had not been filing this form for any of their claims at the time of our on-site audit. However, it is important to note that since the time of the on-site audit, they have made tremendous effort to rectify this issue both prospectively and retroactively for all 2000 claims, 2001 claims and all other open claims.

## SUMMARY (continued)

- ◆ Three (50%) of the six initial indemnity payments were made timely.
    - One claim had not been paid at the time of audit and is subject to penalties under §205(3).
      - ❖ Benefits were promptly calculated and paid (\$193.66) upon request from the Audit Division.
  - ◆ Eighty-three percent (83%) of subsequent payments were made timely.
    - No subsequent payments (made as of October 2, 2001) were found to be in violation of §205(3).
  - ◆ The average weekly wage (AWW) was calculated correctly for two (50%) of the four compensable claims where wage information was required prior to our audit.
    - One claim involved a week of wages that was inadvertently omitted when the AWW was calculated. This increased the AWW and rate, and resulted in an overpayment of benefits.
      - ❖ This overpayment was compounded by an unidentified overpayment that resulted in a total overpayment of \$866.31.
    - One claim involved a mathematical error and the inclusion of the employee's wages for the week of injury. This reduced the AWW and rate, and resulted in an underpayment of benefits:
      - ❖ Upon notice from this division, GAB Robins promptly reviewed this issue, made the appropriate corrections and paid the employee the balance due (\$6.95).
- Given the nature of the aforementioned errors, this Audit Division believes that GAB Robins understands and routinely uses the proper methods for calculating AWWs.
- ◆ Zero percent (0%) compliance was found in calculating weekly benefits rates (prior to audit).
    - In addition to the two rates mentioned above, two rates were incorrectly charted from the Weekly Benefit Table. Both errors resulted in underpayments.
      - ❖ Upon request from the Audit Division, GAB Robins promptly recalculated benefits and paid the balance due (\$6.71) for the first of these two claims.
      - ❖ The underpayment for the second claim was compounded by the fact that one week of partial benefits had not been paid at the time of audit (§205.3 penalty applies). Upon request from the Audit Division, GAB Robins promptly reviewed these issues, recalculated benefits, and paid the balance due (\$86.76).

## **SUMMARY (continued)**

Again, this Audit Division believes that GAB Robins understands and routinely uses the proper methods for calculating weekly benefit rates. However, greater care should be used to ensure accuracy.

- No errors were found in the methods used to calculate partial benefits.
- Box 24 (Date Check Mailed) of the WCB-3, Memorandum of Payment (MOP), should accurately reflect the date that the initial indemnity payment is sent to the employee. The dates reported in Box 24 were either incorrect or missing on the initial MOPs filed for all five of the compensable claims that were audited.
  - ◆ This issue was addressed at the time of the exit conference. GAB Robins' on-site adjuster immediately discussed changes that will be made to internal procedures to ensure more accurate data in Box 24 of the MOP.

The penalties listed on pages 7 and 8 of this report are representative of compliance as measured on October 26, 2001. (October 26, 2001 was the deadline given for response to the Audit Division's first request for information, forms and corrections needed.)

## PENALTIES

### A. Section 205(3), M.R.S.A. Penalties (payable to injured employees)

“When there is not an ongoing dispute, if weekly compensation benefits or accrued weekly benefits are not paid within 30 days after becoming due and payable, \$50 per day must be added and paid to the worker for each day over 30 days in which the benefits are not paid. Not more than \$1,500 in total may be added pursuant to this subsection. For purposes of ratemaking, daily charges paid under this subsection do not constitute elements of loss.”

Penalties pursuant to 39-A M.R.S.A. Sec. 205(3) are paid directly to the injured employee. The penalty below is being sought. If you disagree, you have the right to a hearing before the Abuse Investigation Unit. Please provide proof of payment for all undisputed penalties.

CLAIM	PENALTY JUSTIFICATION	PENALTY AMOUNT
Dennis Barron vs. Sonoco Products Date of Injury: 3-14-00 GAB Robins' File #: 21-02279 WCB File #: 3563	The final indemnity payment (for the week ending 7-30-00) was made 449 days after the previous indemnity payment.	\$ 1,500.00
Angela Manion vs. Pizza Hut Date of Injury: 2-12-00 GAB Robins' File #: 24021-02224 WCB File #: 20553	No NOC was filed, and the first indemnity payment was made 605 days after compensation became due and payable.	\$ 1,500.00
<b>Total Penalties to Injured Employees</b>		<b>\$ 3,000.00</b>



## **PENALTIES**

### **◆ Penalties Allowed by Law (Payable to the Workers' Compensation Board)**

#### **39-A M.R.S.A. Sec. 359(2)**

“In addition to any other penalty assessment permitted under this Act, the board may assess civil penalties not to exceed \$10,000 upon finding, after hearing, that an employer, insurer or 3<sup>rd</sup>-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. The board shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt. This certification by the board is exempt from the provisions of the Maine Administrative Procedure Act.”

#### **39-A M.R.S.A. Sec. 360(1)(A)**

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete any report or form required by this Act or rules adopted under this Act;”

- Two (2) forms were not filed (\$200.00).

#### **39-A M.R.S.A. Sec. 360(1)(B)**

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete such a report or form within the time limits specified in this Act or rules adopted under this Act.”

- Fourteen (14) forms were filed late (\$1400.00).

#### **39-A M.R.S.A. Sec. 360(2)**

“The board may assess, after hearing, a civil penalty in an amount not to exceed \$1,000 for an individual and \$10,000 for a corporation, partnership or other legal entity for any willful violation of this Act, fraud or intentional misrepresentation. The board may also require that person to repay any compensation received through a violation of this act, fraud or intentional misrepresentation or to pay any compensation withheld through a violation of this Act, fraud or misrepresentation, with interest at the rate of 10% per year.

## INDEMNITY BENEFITS

### A. Prompt Initial Payment of Benefits

			2000	
			Number	Percent
Check Mailed Within:				
0-14	Days	<b>Compliant</b>	3	50.0%
15-28	Days		0	0.0%
29+	Days		2	37.5%
Not Paid			1	12.5%
Total Due			6	100.0%

### B. Prompt Subsequent Payment of Benefits

			2000	
			Number	Percent
Check Mailed Within:				
0-7	Days	<b>Compliant</b>	15	83%
8-14	Days		2	11%
15+	Days		1	6%
Total Due			18	100%

### C. Accuracy of Average Weekly Wage

			2000	
			Number	Percent
Calculated:				
Correct		<b>Compliant</b>	2	50%
Incorrect			2	50%
Total			4	100%

### D. Accuracy of Weekly Benefit Rate

			2000	
			Number	Percent
Calculated:				
Correct		<b>Compliant</b>	0	0%
Incorrect			4	100%
Total			4	100%

# FORM FILING

## A. First Report (WCB-1)

		2000	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	7	64%
Filed Late		1	9%
Not Filed		3	27%
Total		11	100%

## B. Wage Statement (WCB-2)

		2000	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	2	40%
Not Filed		3	60%
Total		5	100%

## C. Schedule of Dependent(s) and Filing Status Statement (WCB-2A)

		2000	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	2	40%
Not Filed		3	60%
Total		5	100%

## D. Memorandum of Payment (WCB-3)

		2000	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	2	40%
Filed Late		1	20%
Not Filed		2	40%
Total		5	100%

## FORM FILING (Continued)

### E. Discontinuance or Modification (WCB-4)

		2000	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	3	60%
Not Filed		2	40%
Total		5	100%

### F. Notice of Controversy (WCB-9)

Lost Time Claims		2000	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	1	25%
Filed Late		2	50%
Not Filed		1	25%
Total		4	100%

*The "Lost Time" NOC shown as "Not Filed" appears to have been sent to the Board prior to audit, but had not been received by the Board at the time of the on-site audit.*

Medical Only Claims		2000	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	2	67%
MedNOC Not Filed		1	33%
Total		3	100%

### G. Statement of Compensation Paid (WCB-11)

		2000	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	0	0%
Not Filed		4	100%
Total		4	100%